demonstrated beyond all question by the experience of England and the few American states where it has been tried. It does not take away from the accused any right to which he is justly entitled, but is designed simply to eliminate unnecessary delays which often result in the defeat of justice. As President Taft has well remarked, it is the duty of the United States to take the lead and adopt a system of procedure which will serve as a model for the states to follow. The opportunity to make an important beginning is now squarely before Congress and we hope it will have the good sense and patriotism to take advantage of it.

J. W. G.

THE RECENT DECISION OF THE ILLINOIS SUPREME COURT ON THE PAROLE LAW.—The decision of the Illinois Supreme Court in People vs. Joyce, handed down February 16, 1910, and reported in 40 Natl. Corp. Repr. 48, in which the court overthrew the entire Parole Law of 1899, has created no small degree of consternation among lawyers, criminologists, and, indeed, all members of the community. This law is the one under which the great majority of those convicted of infamous crimes during the last ten years have been sentenced, and while the opinion of the court in defeating the law of 1899 at the same time revives the earlier act of 1895, as amended in 1897, and authorizes a resentencing of convicts under the earlier acts without the necessity of a retrial, the decision, nevertheless, if it stands, seems likely to give rise to numerous questions of great difficulty and embarrassment and not improbably to open the prison doors to many who are serving sentences justly imposed for crimes committed. The subsequent action of the court in allowing a rehearing in the case and staying proceedings therein has afforded some ground for hope that the court may ultimately change its ruling, and sustain the essential provisions of the law of 1899.

So far as the fundamental principles of the parole system are concerned, the opinion of the court seems unimportant. There is no intimation that those principles are necessarily incompatible with the provisions of the State Constitution. The court had already, in the case of George vs. The People, 167 Ill. 447, sustained the constitutionality of the former parole law. The latter case in no way shakes the authority of the earlier one. In fact, the later case, in overthrowing the parole law of 1899, expressly holds the former parole law to be revived and in full force and

effect. The decision, then, clearly deals no blow to the essential principles of the parole system.

The actual decision of the court proceeds upon extremely technical lines. The State Constitution provides that no Act shall embrace more than one subject, and that that subject shall be expressed in its title. It also provides that bills making appropriations for the salaries of officers of the government shall contain no provision on any other subject. The title of the Parole Law of 1899 was, "An Act to revise the law in relation to the sentence and commitment of persons convicted of crime and providing for a system of parole, and to provide compensation for the officers of said system of parole." The act contained provisions as to the various matters mentioned in the title. It provided for indeterminate sentences, for release of prisoners on parole, and for their discharge, and it appropriated money to pay the salaries of the parole officers. The act was attacked as embracing more than one subject, and therefore violating the constitutional provision above referred to. The court, however, denied this contention. It held that the Act embraced only one main subject, i. e., the establishment of a parole system, and that the other provisions were connected with, and properly incidental to, this main subject, and that the Act therefore embraced only one subject and not three separate subjects.

The court, however, held the entire act was made unconstitutional by the two sections contained in it making appropriations for salaries. It held that these sections could not be rejected and the rest of the act sustained, notwithstanding the fact that the court had already declared the main purpose of the act to be the establishment of a parole system, and notwithstanding the fact that the Act would be left a perfect and complete law for the accomplishment of this main purpose, with the incidental provision for salaries stricken out. A previous case (Matthews vs. People, 202 Ill. 389, 410), where it was said that similarly unconstitutional provisions for appropriations might be rejected from an act, and the rest of the act sustained, was distinguished, because in the former case the title of the act was silent on the subject of the appropriation, while in the Parole Law the subject of appropriation is made a part of the title. The court says that since the title includes both the subject of the parole system and the appropriation for the salaries, and under the Constitution both cannot stand together in one bill, the court cannot "make

a choice," and retain the parole system part of the Act and reject the appropriation part.

This position of the court has created great astonishment among lawyers. It is settled law that though an act contains unconstitutional provisions, if these are merely incidental to the main purpose of the act, and can be separated from the rest of the act, and rejected, and still leave the remainder an effective law for the accomplishment of the main purposes for which it was enacted, the unconstitutional part will be rejected, and the rest of the act sustained. This process of rejection is in every case subject to the theoretical objection that the expressed intent of the Legislature is departed from, and that that body might not have been willing to pass the retained portions of the act except in connection with the rejected part, on the supposition that the entire act was in all its parts a valid and enforceable law. In other words, the process of rejection of a part only of an act implies a judgment by the court as to what the Legislative intent would be in the emergency created by the partial unconstitutionality of the act. It is therefore no argument against rejection that the court must "make a choice." It must necessarily do so in all cases of this character. It must, in all cases of this kind, decide whether if the alternative of no act at all, or of an act shorn of the unconstitutional features, were presented to the Legislature it would choose the latter alternative. In the case of the Parole Act the presumption in favor of a Legislative choice of the partial act rather than of no act at all, would seem extraordinarily clear. To suppose that the Legislature would not have passed the parole system part of the law unless it could also in the same act pass the appropriation provision (though it could provide for the appropriation just as well in an independent act), would be to impute to the Legislature a degree of imbecility which its severest critics have never charged against it.

The fact that the title includes the subject of appropriations seems to be no reason for distinguishing this case from former cases where it has been said that the appropriation provisions of acts might be rejected and the rest sustained. The court says it cannot choose between the different subjects included in the title. But the court decided that the main purpose of the act was the parole system and the other provisions of the act subordinate to this main purpose. If this is true of the body of the act, it is equally true of the title. Then, if the court would reject the

separate and incidental provision for appropriation in the absence of any mention of this subject in the title, why should a mention of it in the title make it any the less separate and incidental and capable of rejection? Let us see what the choice was, which was presented to the court, and which it professed itself unable to make. It was a choice between the two subjects of the title, the parole system and the appropriation. But clearly the court could not choose the appropriation part of the act and reject the parole system part. That would leave an appropriation with nothing to appropriate for. So really the only possible choice among the subjects mentioned in the title was a choice in favor of the parole system part of the act. From every point of view, the action of the court in defeating the entire act instead of merely rejecting the appropriation provisions seems contrary to the court's prior decisions and to sound reason; and it is to be hoped that it will upon rehearing revise its judgment in this respect.

The overthrown parole law provided for the discharge of prisoners by the Board of Pardons, and prisoners were sentenced to remain confined until so discharged (but not exceeding the maximum term fixed by law for the crime). This provision was attacked as giving judicial powers to the Board of Pardons, but the court found it unnecessary to pass upon the question, the act being held invalid upon the ground above referred to.

The indeterminate sentence feature of the act was attacked in People vs. Deluce, 237 Ill. 541, on the ground that the sentence under the act was not made proportionate to the offense. The court says: "This court fully considered the constitutionality of this act on the matters involved in People vs. State Reformatory, 148 Ill. 413, and People vs. George, 167 Ill. 447. These decisions fully cover all the points raised in the briefs. We see no reason to change or add to what we there stated." In view of this language, it is a little surprising to find the court referring to the constitutionality of the indeterminate sentence provisions of the Parole Act, as a matter upon which it does not decide, and which it apparently considers as open to question. It would seem that the constitutionality of these provisions was fully established by prior decisions of the court. Similar provisions have been sustained generally in other states. Miller vs. State, 149 Ind. 607; Commonwealth vs. Brown, 167 Mass. 144; Attorney General vs. Peters, 43 Ohio St. 629; People vs. Warden of Sing Sing Prison, 39 Misc. (N. Y.) 113, *Ex parte* Howard, 72 Kan. 273; The State vs. Page, 60 Kan. 664. L. E. G.